It is also ordered that respondent pay to Ms. Lourdes Gonzalez Lopez the total sum of $507.23, which represents the sum of $445.50 in back pay, plus interest in the amount of $61.73, computed at the rate of nine percent for the 562-day period beginning on Thursday, January 25, 1996, to the date of this Decision and Order.

JOSEPH E. MCGUIRE
Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. §1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. §1324b(i), any person aggrieved by such Order seeks a timely review of this Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of this Order.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

September 2, 1997

JOSE PROTO ALCARAZ, Complainant,	)
v.	) 8 U.S.C. 1324b Proceeding) OCAHO Case No. 96B00060
GENERAL MOTORS CORP., Respondent.	)

ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED FOR COMPLAINANT'S FAILURE TO COMPLY WITH THE COURT'S MAY 13, 1997 DISCOVERY ORDER

Under consideration in this administrative proceeding is Jose Proto Alcaraz's June 10, 1996 Complaint alleging national origin and citizenship status discrimination, retaliation and document abuse against General Motors Corp. (respondent or General Motors) in violation of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. §1324b.

On April 7, 1997, respondent filed a pleading captioned Motion to Compel and For Sanctions and Memorandum in Support Thereof, in which it requested that complainant be ordered to answer fully those of its interrogatories numbered 4, 9, 10, and 11, and to also produce all document copies previously requested by respondent in those of its requests for production numbered 2, 3, 4, 5, 7, 9, and 10, in order to allow respondent to properly prepare its defense.

On May 13, 1997, the undersigned issued an order directing complainant to file complete answers to those interrogatories and requests for production in accordance with applicable OCAHO rules[1]

[1]Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. Pt. 68 (1996).

(May 13, 1997 Discovery Order). Complainant's responses were due on June 4, 1997.

Complainant's counsel, Ubel G. Velez, filed a letter with this Office on June 27, 1997, stating that "all answers to the Interrogatories were provided by Mr. Alcaraz at his deposition taken on April 22, 1997." This submission, filed 13 days after its due date, is clearly insufficient to satisfy the requirements of the May 13, 1997 Discovery Order.

OCAHO procedural rules require interrogatories to be answered separately and fully in writing under oath, and where information is unavailable, an explanation must be provided detailing efforts made to obtain it. 28 C.F.R. §68.19(b).

Claimant's counsel of record has erred in suggesting that testimony taken at complainant's deposition is sufficient to comply with the May 13, 1997 Discovery Order. *Ironworkers Local 455 v. Lake Construction & Development Corp.*, 6 OCAHO 911 (1996) (interrogatory answers must be self-contained, without directing the inquirer to depositions or other external material).

In a case involving a similar factual scenario, the U.S. Court of Appeals for the Third Circuit noted the principal reason why deposition testimony may not substitute for written sworn answers:

> Plaintiff's assertion that written interrogatories may be answered through testimony during oral deposition illustrates a fundamental misapprehension concerning the timing and purpose of discovery. Plaintiff's answers to defendant's interrogatories were due three weeks before plaintiff's deposition and were to expedite the proceedings and aid defendant's counsel in the deposition.

DiGregorio v. First Rediscount Corp., 506 F.2d 781, 787 (3d Cir. 1974) (affirming district court's dismissal of plaintiff's action for failure to abide by discovery orders); *Nat'l Hockey League v. Metropolitan Hockey, Inc.*, 427 U.S. 639 (1976) (per curiam) (approving the dismissal of an antitrust action as a sanction for plaintiff's failure to timely answer written interrogatories).

In this proceeding, complainant's initial responses to respondent's interrogatories were due on January 21, 1997, in anticipation of taking complainant's deposition which had been noticed for January 27, 1997. Respondent did not receive complainant's answers until February 18, 1997, but because those responses were inadequate,

and because his production of documents was deficient as well, respondent was forced to expend resources in filing its April 7, 1997 motion to compel complete answers and production.

Having chosen to file an inadequate and late response to the May 13, 1997 Discovery Order, it is quite clear that complainant suffers from the same "fundamental misapprehension concerning the timing and purpose of discovery" noted by the Third Circuit.

Rule 68.23(c) provides for five (5) separate sanctions for the failure of a party to obey a court order to provide discovery:

> (1) Infer and conclude that the admission, testimony, documents, or other evidence would have been adverse to the non-complying party;
>
> (2) Rule that for the purposes of the proceeding the matter or matters concerning which the order was issued be taken as established adversely to the non-complying party;
>
> (3) Rule that the non-complying party may not introduce into evidence or otherwise rely upon testimony by such party, officer or agent, or the documents or other evidence, in support of or in opposition to any claim or defense;
>
> (4) Rule that the non-complying party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;
>
> (5) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

Before selecting the appropriate sanction(s) from this list, complainant shall be afforded the opportunity to comply with the May 13, 1997 Discovery Order. This is being done because of concern for the complainant's interests and the public's interest in the fair administration of laws protecting against immigration-related workplace discrimination. *DiGregorio*, 506 F.2d at 789. Therefore, a copy